

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SANTOS HERNANDEZ and EMANUEL DE JESUS LIEVANO,

Plaintiffs,

-against-

20-cv-4026 (NCM) (SIL)
REPLY TO R&R

ROSSO UPTOWN, LTD, MICHAEL TIZZANO and
MASSIMO GAMMELLA,

Defendants.
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FILED
Dec 26, 2024, 12:22 PM
in the Clerk's Office
U.S. District Court,
EDNY, Brooklyn Pro
Se Office via Box.com

**MOTION TO STAY DECISION ON PLAINTIFFS' MOTION TO STRIKE AND FOR
DEFAULT JUDGMENT AND REQUEST FOR EXTENSION TO RETAIN LEGAL
COUNSEL.**

TO THE HONORABLE JUDGE NATASHA C. MERLE AND JUDGE STEVEN I. LOCKE.

I, Massimo Gammella, the pro se defendant and solely owner and shareholder of the corporate Defendant, Rosso Uptown LTD, respectfully move this Court to stay its decision on Plaintiffs' motions to strike the corporate Defendant's Amended Answer for default judgement against the Defendants. Additionally, I request a 30-45 day extension to secure legal representation for the Corporate Defendant due to holiday season and associated challenges in scheduling consultations with attorneys.

1. Corporate Representation Requirement:

I fully understand that as corporate entity, Rosso Uptown LTD cannot proceed in this Court without legal representation, even though I, as its owner, am representing myself pro se in this matter.

Although the corporation has been closed, I am actively taking steps to retain counsel to represent it in compliance with the law.

2. Efforts to retain Counsel:

While I am committed to retaining legal counsel for Rosso Uptown LTD, the holiday season present significant logistical challenges. Many attorneys I have contacted have limited availability during this time, and it is not a convenient period to conduct consultations and make informed decisions. I respectfully request an extension of 30 to 45 days to allow adequate time to retain counsel.

3. Applicability of the Fair Labor Standard Act (FLSA)

I believe that Plaintiffs' claims under the FLSA are inapplicable because the Statute requires that employers have a gross annual income of \$500,000 or more to qualify as covered enterprises. I have repeatedly demonstrated, through evidence such as the corporation's income tax returns and other financial records, that Rosso Uptown LTD operated below this threshold. This is also another reason why I will try to retain legal representation for the corporation, it will be futile on my part to allow that the Court, though the corporation is closed, will grant Plaintiffs a default judgement, while the law is clearly on my side.

4. Efforts to comply:

While I am confident the Plaintiffs' claims lack merit under the FLSA, I understand it is my duty to ensure **the corporation is represented**. I am therefore committed to retaining counsel for Rosso Uptown LTD and will continue to make every effort to do so promptly.

5. Prejudice to the defendants:

Granting Plaintiffs' motions at this stage, particularly for default judgment, would be unjust and highly prejudicial. Default judgment would effectively penalize me and the corporate Defendant without allowing us the opportunity to fully present our defense, especially considering I have consistently acted in good faith to comply with court procedures and address the Plaintiffs' allegations.

6. Request for Stay and Extension:

I respectfully request that the Court:

- a. Withhold ruling on Plaintiff's motions to strike and for default judgment until legal representation is secure or the matter proceeds to trial; and
- b. Grant a 30 to 45 day extension to allow me sufficient time to retain counsel for the corporate Defendant, taking into consideration the challenges of the holiday season.

7. Interest of Justice:

Given the circumstances, including the corporation's financial status, its closure, the applicability of the FLSA, and the logistical difficulties during the holiday season, it would be inequitable to grant a default judgement or to strike the corporate Defendants' Amended Answer. Staying the decision and granting the request extension would ensure that all

parties have a fair opportunity to present their argument and comply with procedural requirements.

CONCLUSION

For these reasons, I respectfully request that the Court stay its decision on Plaintiffs' motions and grant a 30 to 45 day extension for time to retain legal counsel for the corporate Defendant.

Respectfully submitted,

Pro se Defendant
Massimo Gammella



Dated: December 23, 2024